FOR ARGUMENT

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-838

STATE OF MAINE AND MICHAEL R. PETIT, COMMISSIONER OF THE DEPARTMENT OF HUMAN SERVICES, STATE OF MAINE,

Petitioners,

v.

JOLINE THIBOUTOT AND LIONEL THIBOUTOT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

BRIEF OF RESPONDENTS

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JOLINE THIBOUTOT AND LIONEL THIBOUTOT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

BRIEF OF RESPONDENTS

Questions Presented

Was the Maine Supreme Judicial Court in error when it interpreted 42 U.S.C. §1983 to provide a cause of action for a violation of the "laws" of the United States, to wit, 42 U.S.C. §602(a)(7), a portion of the Social Security Act relating to Aid to Families with Dependent Children?

Was the Maine Supreme Judicial Court in error when it ruled that 42 U.S.C. §1988 authorized an award of attorney's fees in an action in which the trial court ruled in favor of respondents but found no violation of respondents' constitutional rights?

Statement

This is an action brought by a class of families who receive AFDC[1] benefits to enforce rights guaranteed to them by the Social Security Act. The plaintiffs (hereafter referred to as "respondents") made no claim that any rights secured by the Constitution were at issue (A. 7-9 and 11-15). The action was filed in the Maine Superior Court in April, 1976 (A. 9); that court issued an injunction on July 14, 1977 requiring the State of Maine (hereafter the "State") to change its AFDC regulation to conform to the Social Security Act (A. 31-32). The Superior Court denied respondents' request for an award of retroactive AFDC benefits for the unnamed class members and also denied their request for attorney's fees (A. 43-44).

The respondents appealed to the Supreme Judicial Court of Maine. The Superior Court judgment was affirmed in part and reversed in part. The State was ordered to pay respondents' attorney's fees. The State filed a petition for a writ of certiorari which was granted on January 21, 1980. *Maine v. Thiboutot*, U.S. , 100 S.Ct. 727 (1980).

The family of Lionel and Joline Thiboutot, the respondents, includes eight children: four by both Lionel and Joline, one by Joline but not Lionel, and three by Lionel but

[1]Aid to Families with Dependent Children. 42 U.S.C. § § 601 *et seq.*; Me. Rev. Stat. tit. 22, §3741.

not Joline. In November, 1975 the respondents were notified by the State of a reduction in their AFDC benefits.[2] Prior to the change the respondents had income from two sources: Lionel earned $490.00 per month as a truck driver, a job he had held for ten years (A. 23). The family also received an AFDC grant of $342.00 per month (A. 8). The respondents had $832.00 per month with which to shelter, feed and clothe their family of ten, including eight growing children.

The reduction in AFDC benefits was determined as follows: In computing the available income of Lionel, the State would no longer subtract from the total family income that portion of Lionel's income which was needed to shelter, feed and clothe the four chidren of both Lionel and Joline (those children not being eligible for AFDC benefits),[3] although Lionel was required by law to support those children and in fact did support them. Respondents argued successfully that the reduction ignored reality and treated, as available, income which was not available under the Social Security Act. 42 U.S.C. §602(a)(7).

Correct application of the Social Security Act to respondents generates approximately $340.00 per month for them in additional AFDC benefits thereby increasing their total income (A. 46). The other class members received similar increases in benefits. The Thiboutots also received a

[2]There is no support in the record for the State's assertion that HEW required it to reduce respondents' benefits. Brief of State, 5. The State has argued that its violation of respondents' rights was in good faith. Brief of State, 7, 14, 18, 26 and 27. But that argument is unsupported by the record and, in any event, avails the State nothing as respondents sought only injunctive and declaratory relief.

[3]The four mutual children were not deprived of parental support and, therefore did not meet the requirement of dependency. 42 U.S.C. §606(a).

retroactive award of approximately $3,000.

Throughout most of the litigation respondents have been represented by counsel who is a member of a small law firm. After obtaining the injunction against enforcement of the unlawful State regulation respondents sought attorney's fees in the amount of $5,622.06 (A. 37-38). The State has never argued that respondents sought an unreasonable amount of fees; rather they have argued that no fees should be allowed.

Summary of Argument

The basic issue in this case is whether persons whose federal statutory rights have been violated by others acting under color of state law can go to court for redress of those violations. As set forth above, respondents are persons of low income. That fact alone indicates their inability to pay the costs, including attorneys' fees, of going to court. Congress, knowing that attorneys' fees are often a substantial deterrent to the private enforcement of federal rights, provided for the payment of prevailing parties' attorneys' fees. Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988. Thus, the Maine Supreme Judicial Court held that respondents were entitled to have their attorneys' fees paid for by the State because respondents successfully enforced their rights under the Social Security Act in court. Respondents' litigation "led to the correction of an erroneous state welfare rule with resulting long-term benefits to an indeterminate class of present and future AFDC recipients." (A. 65, Opinion, Maine Supreme Judicial Court). The State has requested this Court to reverse the holding of the Court below.

Because the Fees Act is applicable, by its terms, to actions brought pursuant to 42 U.S.C. §1983, this Court has been asked by the State to review whether the Maine Supreme Judicial Court erred in finding that this case is properly a §1983 action. The threshold issue is, therefore, whether §1983 provides a cause of action for violations of federal statutory rights.

I. Respondents stated a cause of action pursuant to 42 U.S.C. §1983 because that section applies to deprivations, under color of state law, of rights secured by "laws". The State violated respondents' rights under the Social Security Act.

In this Court the State argues that §1983 does not apply to deprivations of federal statutory rights unless the statute is one providing for equal or civil rights. The State would have this Court interpret the phrase "Constitution and laws" as used in the civil rights statutes to mean other than what it says.

In cases of statutory interpretation the Court must look first to the plain wording of the statute. *Caminetti v. United States,* 242 U.S. 470 (1917). As long as the meaning is plain, the courts cannot look behind the statute or search for an ambiguity in its antecedents. *United States v. Bowen,* 100 U.S. 508 (1879). Section 1983 is not ambiguous; it states that any person who, under color of law, subjects any person to the deprivation of rights secured by the "Constitution and laws" shall be liable to the injured party.

Even if this Court goes beyond the plain meaning of §1983 and looks at the other civil rights statutes enacted in the Revised Statutes of 1874, it will see that five out of the six general civil rights statutes, including §1983, utilized the phrase Constitution and laws and in only one is the phrase modified by the addition of the words "providing for equal

rights", R.S. 629(16) (now 28 U.S.C. §1343(3)). Furthermore, a review of §1983 and the other statutes demonstrates that Congress intended the words "Constitution and laws" to have the same scope and meaning as those words have in the Supremacy Clause.

Although resort to legislative history is unnecessary since there is no ambiguity in §1983, that complex history reveals that Congress recognized the difference between the phrase "Constitution and laws" and the phrase "Constitution and laws providing for equal rights." Congress consciously chose to use the former phrase in §1983 (then R.S. 1979) and four other statutes but chose to use the latter phrase in only one of the relevant Revised Statutes in 1874. See the attached statutory derivation chart.

This Court held in *United States v. Price*, 383 U.S. 787 (1966), and similar cases, that civil rights statutes are to be given their broad and literal meaning. To read §1983 as the State suggests is to ignore a large number of statutory §1983 cases decided in this Court and in the lower federal courts. *Edelman v. Jordan*, 415 U.S. 651 (1974); *Randall v. Goldmark*, 495 F.2d 356 (1st Cir. 1974). This Court has stated that "suits in federal court under §1983 are proper to secure compliance with provisions of the Social Security Act on the part of participating states." *Edelman v. Jordan, supra* at 675.

In addition to examining the words of §1983 and the relevant case law, this Court should consider that a ruling favorable to the respondents will preserve federalism within the judicial system by directing most statutory §1983 litigation to state courts. An analysis of available statistics shows that this court need not be concerned about "opening the floodgates" if it affirms the judgment of the Maine Supreme Judicial Court.

II. If this Court finds, as respondents believe it must, that §1983 provides a cause of action for deprivations, under color of state law, of federal statutory rights, then this Court must also conclude necessarily that the Maine Supreme Judicial Court was correct in its holding as to the Fees Act, 42 U.S.C. §1988. Like §1983, the Fees Act is without ambiguity. It allows courts to award attorneys' fees to prevailing parties in any §1983 action, constitutional or statutory, in federal or state court. The broad application of the Fees Act was intended by Congress, and this Court has held the application of the Fees Act against state defendants was within the power of Congress. *Hutto v. Finney*, 437 U.S. 678, 693-694 (1978).

The purpose of the Fees Act is to provide for the private enforcement of the civil rights acts. S. Rep. 94-1011, 94th Cong., 2d Sess. 2; 1976 U.S. Code, Cong. & Ad. News 5908, 5909-5910. An award of fees to respondents will encourage and implement this clearly stated Congressional policy. It will also encourage litigants to choose state courts.

Argument

I.

RESPONDENTS HAVE PROPERLY ASSERTED A CAUSE OF ACTION UNDER 42 U.S.C. §1983 AS THEY SOUGHT TO ENFORCE RIGHTS SECURED BY A FEDERAL LAW.

A. Section 1983 Provides a Cause of Action for Interference With Any Right Secured by a Federal Statute.

1. The Plain Meaning of 42 U.S.C. §1983 Requires Its Application to Statutory Claims.

Maine's welfare regulations deprived the respondents of a right secured by 42 U.S.C. §602(a)(7). Respondents believe that the plain meaning of §1983 allows them to assert a cause of action for that deprivation of a federal statutory right. The State of Maine contends that §1983 should be interpreted to contain additional limiting language.[4]

Section 1983 is clear and unambiguous on its face. It reads:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

While in all cases of statutory construction, the task of the court is to interpret the words of the statute in light of the

[4]Much of the argument of the State appears to rely on the concurring opinion of Mr. Justice Powell in *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 623 (1979). Justice Powell suggests in *Chapman* that the words "Constitution and laws," should be read "Constitution and laws providing for equal rights." *Id.* at 637 n. 20, 645-646. The State, while never clearly setting forth the interpretation it feels should be given to the statute, indicates in its summary of argument that the words to be engrafted are "civil rights," thus making §1983 read "Constitution and civil rights laws," or "Constitution and laws providing for civil rights." Brief of State, 8.

purposes Congress sought to serve,[5] "the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the courts is to enforce it according to its terms."[6] This language has been referred to as a classic expression of the plain meaning rule.[7]

There is no ambiguity in §1983. It applies to "laws" without modification. A review of the other relevant civil rights statutes shows that the plain meaning of §1983 is consistent with the language and meaning of those statutes.

R.S. 1979 (now §1983) was first enacted in its present form in 1874.[8] In 1874 six related statutory provisions including R.S. 1979 were enacted as part of the Revised Statutes:[9]

(1) R.S. 1979 provided a civil action for persons whose rights secured by the Constitution and laws were violated under color of state law. (2) R.S. 5510 (now 18 U.S.C. §242) punished criminal conduct, committed under color of state law, which interfered with rights secured or protected by the Constitution and laws of the United States.

(3) R.S. 5508 (now 18 U.S.C. §241) punished criminal conspiracies interfering with rights secured by the Con-

[5]*Chapman v. Houston Welfare Rights Organization, supra* at 608.

[6]*Caminetti v. United States*, 242 U.S. 470 (1917); *see also* 2A C. Sands, *Sutherland's Statutory Construction* §46.01 (1973) (hereafter C. Sands).

[7]C. Sands, *supra* n. 7.

[8]Citations to the Revised Statutes of 1874 are R.S.

[9]At that time two statutes providing substantive rights were also enacted as part of the Revised Statutes. Those sections were R.S. 1977 and 1978 (now 42 U.S.C. §§1981 and 1982). A more thorough discussion of the history of all these statutes can be found below at 18-24.

The various civil rights statutes are set forth in the statutory derivation chart attached to this brief.

stitution or laws of the United States.

(4) R.S. 563(12) provided district court jurisdiction of actions authorized by law to redress deprivations, under color of state law, of rights secured by the Constitution or by any law.

(5) R.S. 629(16) provided circuit court jurisdiction of actions authorized by law to redress deprivations, under color of state law, of rights secured by the Constitution or rights secured by any law providing for equal rights.[10]

(6) R.S. 722 (now 42 U.S.C. §1988) provided that, in civil rights actions, where federal remedial law was deficient state remedial law was to be applied so long as it was consistent with the Constitution and laws.

With the adoption of the Revised Statutes five of the six general sections applied to all constitutional provisions and all statutory provisions. R.S. 1979, 5510, 5508, 563(12) and 722. Only R.S. 629(16) was limited by its language to a lesser scope. It is difficult to believe that Congress intended to limit the five sections with the language of a sixth when it did not so state.[11] No modifier is present and nothing suggests any restriction on the scope of the words "Constitution and laws". *See, Lewis v. United States,* U.S. , 48 U.S.L.W. 4205, 4207 (1980). Thus, R.S. 1979 (now §1983) should be interpreted to mean what it says.[12]

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[10]R.S. 563(12) and R.S. 629(16) were merged in 1911 with enactment of the Judicial Code. Circuit courts were abolished, and district courts were given jurisdiction of civil actions redressing deprivations under color of law of rights secured by the Constitution and laws providing for equal rights. Judicial Code of 1911, § §24(14) and 289, 36 Stat. 1087, 1092, 1167 (now 28 U.S.C. §1343(3)).

[11]A similar example can be found in the removal statutes. *Compare* R.S. 640 *with* R.S. 641.

[12]In concentrating on the language "Constitution and laws" it is easy to lose sight of a significant limitation on the scope of R.S. 1979: it

(continued)

An interpretation limiting the meaning of "Constitution and laws" to "Constitution and laws providing for equal rights" creates an anomalous result. If so limited, it would at the time of its enactment merely have given a statutory cause of action for violations of R.S. 1977 and 1978 (now 42 U.S.C. § §1981 and 1982). However, the common antecedent of R.S. 1977 and 1978 (§1 of the 1866 Act) had already been interpreted to provide a remedy for its violation. *Live Stock, & Association v. Crescent City & Co.*, 15 F. Cas. 649, 655 (5th Cir. 1870). In 1874 there were no other federal equal rights statutes to which R.S. 1979 could have applied if so interpreted. Congress cannot be presumed to have placed words in a statute which would have no purpose or meaning.

A further anomaly that follows from the State's argument is that in R.S. 5508 the same words must have a different meaning where they appear at different places in the same sentence. The first time the phrase "Constitution or laws" appears it is used in the same context as it is used in R.S. 1979, that is, speaking of rights secured by the Constitution and laws. However, the phrase "Constitution or laws" appears again in the same sentence stating that persons who are convicted of conspiring to deprive others of their rights can be punished by being forever ineligible for any office or honor provided by the "Constitution or laws". Obviously, the addition of the phrase "providing for equal rights" would

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(footnote continued from preceding page)

applies only to actions under color of state law. The amici appear to have made that mistake. Brief of Amici, 11. The statute is designed to provide citizens with a full arsenal of remedies for combatting governmental misconduct. Congress can and has excluded certain statutes from the scope of §1983. It has done so expressly, *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970), and impliedly, *compare Great American Federal Savings & Loan Association v. Novotny*, 442 U.S. 366 (1979) (referring to §1985) *with Rosado v. Wyman*, 397 U.S. 397 (1970).

make no sense whatsoever in the latter context. It is difficult to assume that Congress used a phrase twice in the same sentence in the same statute intending it to have two meanings.[13]

R.S. 1979 was different from the statute on which it was based. That statute protected rights secured by the Constitution. Act of April 20, 1871, §1, 17 Stat. 13. However, this Court on many occasions in the years following the enactment of the Revised Statutes has refused to alter statutes when the meaning was plain even though the plain meaning differed from the meaning of the prior acts on which they were based. In *United States v. Bowen*, 100 U.S. 508, 513 (1879), the rule was stated:

> When the meaning is plain, the courts cannot look to the statutes which have been revised to see if Congress erred in that revision, but may do so when necessary to construe doubtful language used in expressing the meaning of Congress.[14]

The plain meaning rule does not allow words to be added to a statute which have never before existed in the statute. This rule prevents this Court from going beyond the plain meaning of 42 U.S.C. §1983 (R.S. 1979) to supply language restricting and limiting its meaning. Although courts in some instances have supplied words in construing statutory language, it is said to be "a power which is exercised with unusual caution." The general rule is that "[w]ords may not be supplied in a statute where the statute is intelligible without the addition of the alleged omission. . . ."

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[13]*See also* R.S. 722 (42 U.S.C. §1988) in which "Constitution and laws" would be meaningless if limited as the State argues.

[14]There are numerous cases expressing the same principle with respect to the Revised Statutes of 1874. *See, e.g., Hamilton v. Rathbone*, 175 U.S. 414 (1899) and the cases cited therein.

."[15] That rule should not be ignored here. This is not one of those "rare and exceptional circumstances" where the letter of the statute should not prevail. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 187 n. 33 (1978).

2. Congress Intended §1983 to Provide a Cause of Action for Deprivation of Any Federal Statutory Right.

It is "[a] fundamental canon of statutory construction . . . that unless otherwise defined words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, U.S. , 100 S.Ct. 311, 314 (1979). In 1874, and indeed from the time of the drafting of the Constitution to the present, the phrase "Constitution and laws" had a plain, clearly and commonly understood meaning. That meaning is coextensive with the scope of the judicial power granted by Article III, §2 of the Constitution, and the Supremacy Clause in Article VI, cl. 2. Those provisions read, in pertinent part, respectively:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties . . . .
>
> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme law of the Land . . . .

Alexander Hamilton in the Federalist papers used the phrase referring to the full extent of the Constitution and all statutes of the United States.[16] In 1801 Congress enacted a

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[15]2A. C. Sands, §47.38 (1973).

[16]"What equitable causes can grow out of the Constitution and laws of the United States?" The Federalist No. 80 (539 J. Cooke ed. 1961); *see also* The Federalist No. 78 (529 J. Cooke ed. 1961).

short-lived predecessor to the present federal question jurisdiction statute, 28 U.S.C. §1331. That statute (as does §1331) used the phrase "Constitution and laws" to describe all the provision of the Constitution and all the laws.[17]

In *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 426 (1819), Chief Justice Marshall said of the Supremacy Clause, "the constitution and laws made in pursuance thereof are supreme; . . . they control the constitution and laws of the respective states, and cannot be controlled by them." In *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 391-392 (1821)[18] he used the phrase to describe the judicial power granted by Article III:

> If the constitution or laws may be violated by proceedings instituted by a State against its own citizens, and if that violation may be such as essentially to affect the constitution and laws . . . why should these cases be excepted from that provision which expressly extends the judicial power of the Union to all cases arising under the constitution and laws?

During the debates on the reconstruction era legislation, there were many references to such cases as *Cohens, supra*, and the Supremacy Clause generally.[19] Looking back on the reconstruction era, the Speaker of the House during much of that time said the following:

> The presumption was that these states would be obedient to the Constitution and laws. But for this

[17]Act of Feb. 13, 1801, §11, 2 Stat. 89, 92; repealed Act of March 8, 1802, §1, 2 Stat. 132.

[18]*See also Dodge v. Woolsley*, 59 U.S. (18 How.) 331, 353, 355, 358 (1855).

[19]President's Annual Message to Congress, Cong. Globe, 42nd Cong. 2nd Sess. 4, 6 (1871); Remarks of Senator Edmunds, Cong. Globe, 42nd Cong., 1st Sess. 692 (1871); Remarks of Representative Bingham, Cong. Globe, 42nd Cong., 1st Sess. App. 81 (1871).

> presumption, legislation would be but idle play, and a government of laws would degenerate at once into a government of force. . . . And if the presumption of obedience with respect to statute law be general, much stronger should it be with respect to organic law, upon which the entire structure of free government is founded. . . .
>
> But it was soon disclosed that on the part of the large mass of those who had participated in the rebellion, properly speaking, indeed, on the part of the vast majority of the white men of the South, there was really no intention to acquiesce in the legislation of Congress, no purpose to abide by the Constitutional Amendments in good faith. . . . 2 J. Blaine, *Twenty Years of Congress*, 466-467 (1884).

It has been suggested that these references support an argument that the passage of the reconstruction era statutes and constitutional amendments were part of a movement to clearly establish the primacy of the national government in all spheres.[20] While that argument is persuasive, it is not necessary for this Court to consider it since the members of Congress in 1874 knew and understood the meaning of the phrase "Constitution and laws" because of its widespread use. That meaning as set forth in R.S. 563(12), 722, 1979, 5508 and 5510 was and is: all the provisions of the United States Constitution and all the laws of the United States.

[20]*Mitchum v. Foster*, 407 U.S. 225, 238-39 (1972); F. Frankfurter and J. Landis, *The Business of the Supreme Court*, 85 n. 135 (1928); E. Gressman, *The Unhappy History of Civil Rights Legislation*, 50 *Mich. L. Rev.* 1323, 1323-24 (1950). Representative Brooks, an opponent of reconstruction, likened the supporters of reconstruction to Federalists of 1800 and said:

> They have no idea of local, State, county, or municipal government. They know nothing but the Federal sword. Cong. Globe, 42nd Cong., 1st Sess. 790 (1871).

3. The Legislative History of the Revised Statutes Supports Respondents' Position.

In his concurring opinion in *Chapman*, Justice Powell explored the legislative history of the relevant provisions of the Revised Statutes. He focused on R.S. 563(12) and 629(16) and said that the broader language in R.S. 563(12) meant the same as the narrower language in R.S. 629(16). He then said that the language of R.S. 1979 and 5510 is likewise to be read as having the narrower meaning of R.S. 629(16). He attributed the difference in language to an oversight by Congress caused by the use of the multiple drafters of the Revised Statutes.[21] His interpretation is erroneous for a number of reasons.

The Congress that enacted the Revised Statutes knew that some changes were unavoidable and that others were desired, notwithstanding the general desire to effect no changes. 2 Cong. Rec. 650 (1874). However, it expressed itself with certainty as to the result of any changes which were made. R.S. 5596 repealed all earlier laws which formed the basis for laws which had been enacted in the revision; R.S. 5595 made the Revised Statutes positive law.[22] Thus, §1 of the 1871 Act was repealed and R.S. 1979 became the law.

When it discovered erroneous or incomplete language in the Revised Statutes, Congress had at least three opportunities to change that language. The first two opportunities were errors and omission bills which altogether

[21]441 U.S. at 634-635 and n. 15.

[22]Congress did not adopt a proposal offered by Representative Willard which would have had the opposite effect: any provision of the Revised Statutes which changed an earlier version of a law would be controlled by the earlier version. 2 Cong. Rec. 648 (1874); *see also Hamilton v. Rathbone*, 175 U.S. 414 (1899) and *United States v. Bowen*, 100 U.S. 508 (1879).

made some 252 changes including two in R.S. 563 and one in R.S. 629. 18 Stat. 1433-36 (Part 1); 19 Stat. 240. R. Dwan & E. Feidler, *The Federal Statutes - Their History and Use*, 22 *Minn. L. Rev.* 1008, 1014 (1938). The statutes were revised in full a second time in 1878. M. Price and H. Bitner, *Effective Legal Research* 29 (1969). Congress did not avail itself of these three opportunities to modify the language of R.S. 563(12), 1979, 5508 or 5510 to conform those sections to the scope of R.S. 629(16).[23]

Prior to Congressional consideration of the Revised Statutes there had been numerous opportunities for members of the public and Congress to suggest corrections in the 1872 Draft of the Revised Statutes[24] which formed the basis for the Revised Statutes.[25] As far as respondents can determine no changes were suggested or adopted to conform any of the relevant provisions to the language of R.S. 629(16).

A close analysis of the original civil rights acts, the 1872 Draft and the Revised Statutes shows that §1983 (R.S. 1979) allows a cause of action to be asserted for violation of

[23]In 1909 Congress codified the criminal statutes and made some minor revision in R.S. 5508 and 5510. 35 Stat. 1092. No changes were made respecting the scope of either of those statutes. This action was taken with the presumed knowledge of *United States v. Waddell*, 112 U.S. 76 (1884), which held that R.S. 5508 applied to all federal statutes.

[24]Respondents cite, only where necessary, to the 1973 Jacobstein and Mersky reprint of the 1872 Draft, by title, chapter and section. Otherwise, they refer to the appropriate United States Code or Revised Statute citation.

[25]In 1872 Thomas Jefferson Durant was assigned the task of correcting the revisers' errors. 2 Cong. Rec. 646 (1874). Experts in the field had access to the Draft. Sen. Misc. Doc. 3, 42nd Cong., 2nd Sess. 3 (1871). Members of Congress with special expertise in particular areas were encouraged to review titles in which they were interested. 2 Cong. Rec. 650 (1874).

any federal statute under color of state law.[26] As noted above at page 10, five of the six statutes dealing generally with civil rights,spoke in the language of the Supremacy Clause.[27]

Congress while considering the Revised Statutes was confronted with two different choices of language when enacting R.S. 5510. In the 1870 Act, §17 (the predecessor of R.S. 5510 and 18 U.S.C. §242) applied to deprivations of rights secured by "the last preceding section"; the only rights secured by "the last preceding section" were equal rights. Obviously, new language had to replace "the last preceding section". Congress could have chosen to have the scope of R.S. 5510 parallel the narrow, "equal rights" language of R.S. 629(16). In the 1870 Act, §6 (the predecessor of R.S. 5508 and 18 U.S.C. §241) applied to deprivations of rights secured by the Constitution or laws. Congress could have chosen to have the scope of R.S. 5510 parallel the broad "Constitution or laws" language of R.S. 5508. It made the latter, broader choice with the knowledge and ability to choose the narrow language option. It consciously rejected the possibility of having R.S. 5510 apply only to those statutes which protected equal rights.

The intent of Congress to give R.S. 5510 a broad, rather than a narrow, meaning is reinforced by a review of the change in its language from the 1872 Draft. Section 190 of that Draft (the revisers' draft of §2 of the Act of 1866 and §17 of 1870 Act and forerunner of R.S. 5510) focused on a

[26]For the following discussion reference to the Statutory Derivation Chart is particularly helpful.

[27]R.S. 1977 and 1978 (now 42 U.S.C. §§1981 and 1982) are equal rights statutes. Their distant predecessor was §1 of the Act of April 9, 1866, 14 Stat. 27, which was substantially re-enacted by §16 of the Act of May 31, 1870, 16 Stat. 140, 144. It is those sections, which provide substantive rights, in the nature of equal rights, to which the general civil rights statutes initially referred. Act of 1866, §§2 and 3, 14 Stat. 27; Act of 1870, §17, 16 Stat. 140, 144.

deprivation of equal rights.[28] However, when §5510 was enacted by Congress in 1874 the focus was on a deprivation of rights secured by the "Constitution and laws". The change in language from the Draft to the Revised Statutes is substantial and illustrates the knowing choice that Congress made to broaden the coverage of R.S. 5510 (18 U.S.C. §242).

The antecedent of R.S. 563(12) and 629(16) (§3 of the 1866 Act) initially provided jurisdiction only for cases involving equal treatment of blacks, arising from §§1 and 2 of the 1866 Act. As R.S. 563(12), §3 was also changed to parallel R.S. 5508. It expanded the jurisdiction of the district court to include cases involving all constitutional claims and all statutory claims where the defendants had acted under color of state law. As a result of the revision, only R.S. 629(16) (also derived from §3) did not parallel the scope of R.S. 5508. It gave jurisdiction to the circuit court for all Constitutional claims but only for statutory claims where equal rights were involved, each requiring defendants to have acted under color of state law.[29]

Congress knew it was broadening the scope of §1 of the 1871 Act (R.S. 1979, §1983) and knew that it would apply to all statutory causes of action. Representative Lawrence discussed that change by referring to the fact that R.S. 5510 (now 18 U.S.C. §242) would be applied more broadly than its predecessor, §17 of the 1870 Act, in a "few instances." 2

[28]The language used was "section _____ of the Title Civil Rights". The only substantive provisions of that Title were what were to become R.S. 1977 and 1978 (formerly §16 of the 1870 Act). Title LXXIII, Chap. VII, §190 (Draft of 1872).

[29]The 1872 Draft contained a long footnote explaining that R.S. 629(16) was to have a limited scope. Respondents believe that no inferences about the scope of the other Revised Statutes can be drawn from that note.

Cong. Rec. 827-828 (1874).[30] In 1874 there were only a "few instances" of federal statutory rights that could be protected by R.S. 1979, 5508 and 5510.[31]

As noted above, Justice Powell suggested that the difference between the scope of R.S. 629(16) and the other civil rights statutes was attributable to the presence of multiple drafters. In fact, Thomas Jefferson Durant as the sole reviser had nine months to review the 1872 Draft and correct any errors. 2 Cong. Rec. 650 (1874). Although Durant's report to Congress has been lost[32] no changes were made respecting the civil rights statutes in question with the exception of the broadening of R.S. 5510 discussed above. Where the revisers and Congress intended identical meaning they used identical words. *Compare* Title XIII, Chap. III, §34(14) (Draft of 1872) and R.S. 563(14) *with* Title XIII, Chap VII, §100(13) (Draft of 1872) and R.S. 629(14).

Congress made no mistake in using the broad phrase "Constitution and laws" in R.S. 563(12), 1979, 5508 and 5510. The Supreme Judicial Court of Maine was correct when it interpreted §1983 (R.S. 1979) to mean what it says and not to be limited by the language which appears only in 28 U.S.C. §1343(3) (R.S. 629(16)).

As Justice Powell recognized, the legislative history of §1983 is a thicket. *Chapman, supra,* 441 U.S. at 623. The

[30]The source of R.S. 5510 was §2 of the 1866 Act, which in turn was also the source of R.S. 1979 (§1983). *Lynch v. Household Finance Corp.*, 405 U.S. 538, 543 n. 7 (1972).

[31]R.S. 2259 provided preemption rights for federal land. R.S. 2289 provided homestead rights for federal land. R.S. 2319 and 2320 provided for establishment of mining claims. R.S. 3194 and 3199 provide for bona fide purchaser rights following forced sales under the revenue acts. There may be some other similar statutes which respondents search of the Revised Statutes did not uncover.

[32]Introduction to Draft, (Draft of 1872).

appropriate method of resolving this case is to avoid that thicket and follow the analytical method of this Court in *Chapman:* Ignore the twists and turns of the now almost vanished trail of legislative history and read §1983 as Congress enacted it.

B. A Substantial Body of Law Supports The Application of §1983 to Statutory Claims.

1. Controlling Case Law Holds That Civil Rights Statutes Are to be Given a Broad and Literal Interpretation.

In *United States v. Price,* 383 U.S. 787, 797 (1966), this Court said of 18 U.S.C. §§241 and 242 (R.S. 5508 and 5510):

> Neither is qualified or limited. Each includes, presumably, *all* of the Constitution and laws of the United States.[33] (Emphasis in original).

The Court went on to say:

> The language of §241 is plain and unlimited. As we have discussed, its language embraces *all* of the rights and privileges secured to citizens by *all* of the Constitution and *all* of the laws of the United States. (Emphasis in original). *Id.* at 800.

The Court analyzed the broadening changes made by Congress in R.S. 5510 (18 U.S.C. §242). Section 242 is the criminal counterpart of §1983 (R.S. 1979). There is no

[33]*Accord, United States v. Classic,* 313 U.S. 299 (1941), where it was held that 18 U.S.C. §§241 and 242 applied to all possible constitutional violations, not just violations of the Fourteenth Amendment.

indication that this Court felt that the change was unwarranted, especially when viewed against the events and passions of the time. *United States v. Price* at 803.

The defendants in *Price* had conceded that §241 (R.S. 5508) applied to all laws. They were making an argument, long favored by opponents of civil rights, that §241 (R.S. 5508) did not apply to the Fourteenth Amendment. The State's argument is essentially the opposite of that made by the defendants in *Price*. They argue that §1983 (R.S. 1979) applies only to the Fourteenth Amendment and statutes identical to it. Brief of State, 13. That argument ignores the language quoted above which means that §242 (R.S. 5510) and §1983 (R.S. 1979) are to be read broadly and literally.

Additional support for respondents' argument follows from *United States v. Waddell*, 112 U.S. 76, 79 (1884). In that case an indictment under R.S. 5508 (18 U.S.C. §241) charged a conspiracy to interfere with rights secured by the Homestead Act, R.S. 2289-2291. The Court said:

> The protection of this section extends to . . . the exercise of rights dependent on the laws of the United States . . . .

See also United States v. Mosley, 238 U.S. 383, 388 (1915). As in *Waddell*, this Court and the lower federal courts have consistently treated §1983 (R.S. 1979) as protecting federal statutory rights.

2. Almost Every Case to Consider This Question Has Agreed With Respondents' Position.

To give to §1983 an interpretation other than its plain meaning and limit it to constitutional claims and statutory claims providing for equal rights would be to repudiate a large number of significant decisions by this Court. At least

since 1968 in *King v. Smith*, 392 U.S. 309 (1968),[34] this Court has held that §1983 applies to statutory claims of the same nature as the respondents' claim. In that case this Court was aware of the issues ultimately to be resolved in *Chapman*, and presumably of those raised here. After deciding that case on statutory grounds the Court went on to say:

> We intimate no views as to whether and under what circumstances suits challenging state AFDC provisions only on the ground that they are inconsistent with the federal statute may be brought *in federal courts*. (Emphasis added). *Id.* at 312 n. 3.

The meaning of that note (anticipating *Chapman*) is that since the merits had been decided on the §1983 statutory grounds, jurisdiction to bring the §1983 claim might exist only in state courts, if there were not a constitutional claim.

Following *King v. Smith*, this Court has decided numerous cases involving statutory claims raised under §1983. *Rosado v. Wyman*, 397 U.S. 397 (1970); *Dandridge v. Williams*, 397 U.S. 471 (1970); *Lewis v. Martin*, 397 U.S. 552 (1970); *California Dept' of Human Resources Development v. Java*, 402 U.S. 121 (1971); *Townsend v.*

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[34] *King v. Smith* and the subsequent cases cited *infra* usually involved constitutional claims as well as statutory ones. In *Hagans v. Lavine*, 415 U.S. 528, 543 (1974) this Court held that if the constitutional claim is substantial, the court has jurisdiction over the statutory claim and that the statutory claim should be decided first. This doctrine of pendant jurisdiction over federal statutory claims can only be utilized when there is, in fact, a federal statutory claim. It does not create those claims contrary to the inference drawn by the amici. Brief of Amici, 8 n. 9.

All of the cases cited at 27, *infra*, involved statutory claims based on the Social Security Act distinct and apart from the constitutional claims. Because the Social Security Act does not contain any express cause of action and because this Court has not held that there is an implied private cause of action, the cause of action or claim for relief could only be based on §1983.

Swank, 404 U.S. 282 (1971); *Jefferson v. Hackney*, 406 U.S. 535 (1972); *New York State Dep't of Social Services v. Dublino*, 413 U.S. 405 (1973); *Hagans v. Lavine*, 415 U.S. 528 (1974); *Edelman v. Jordan*, 415 U.S. 651 (1974); *Shea v. Vialpando*, 416 U.S. 251 (1974); *Van Lare v. Hurley*, 421 U.S. 338 (1975); *Philbrook v. Glodgett*, 421 U.S. 707 (1975); *Ohio Bureau of Employment Services v. Hodory*, 431 U.S. 471 (1977); *Quern v. Mandley*, 436 U.S. 725 (1978); *Miller v. Youakim*, 440 U.S. 125 (1979).

Two of these cases deserve more detailed consideration. In *Rosado v. Wyman*, 397 U.S. 397 (1970), this Court reached and decided a §1983 claim based on the Social Security Act when there was no constitutional question in the case. The constitutional claim had been mooted two years previously in the district court. 397 U.S. at 400.

In *Edelman v. Jordan*, 415 U.S. 651, 674-677 (1974), this Court recognized that *Rosado* stood for the proposition that respondents assert here. This Court said:

> Our Brother MARSHALL argues in dissent, and the Court of Appeals held, that although the Social Security Act itself does not create a private cause of action, the cause of action created by 42 U.S.C. §1983, [indicates] that Congress intended a cause of action for public aid recipients such as respondent. It is, of course, true that *Rosado v. Wyman* . . . held that suits in federal court under §1983 are proper to secure compliance with the provisions of the Social Security Act on the part of participating States. . . . [A] §1983 action may be instituted by public aid recipients such as respondent. . . ." (footnotes omitted)

In dissent Justice Marshall said:

> But a cause of action is clearly provided by 42 U.S.C. §1983, which in terms authorizes suits to redress deprivations of rights secured by the "laws" of the United States. *Id.* at 690.

There is equally explicit dicta in *City of Greenwood v. Peacock*, 384 U.S. 808, 829-30 (1966).

Lower courts have consistently read §1983 to mean what it says since Judge Learned Hand's decision in *Bomar v. Keyes*, 162 F.2d 136 (2d Cir. 1947). In holding §1983 applicable to statutory causes of action, the Second Circuit found "the language . . . so plain that the only question is whether this particular 'law' secured to the plaintiff a 'privilege.'" *Id.* at 139. *Accord, Louise B. v. Coluatti*, 606 F.2d 392 (3rd Cir. 1979); *Tongol v. Usery*, 601 F.2d 1091 (9th Cir. 1979); *Blue v. Craig*, 505 F.2d 830 (4th Cir. 1974); *Randall v. Goldmark*, 495 F.2d 356 (1st Cir. 1974); *Gomez v. Florida State Employment Service*, 417 F.2d 569 (5th Cir. 1969).

The House sponsor, Representative Drinan, of what was to become the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, 42 U.S.C. §1988 (hereafter the "Fees Act")[35] cited *Blue v. Craig, supra*, with approval in explaining that §1983 protects both constitutional and statutory rights.[36] 122 Cong. Rec. 35122 (1976). His interpretation is entitled to substantial weight. *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976).

To ignore Congress' most recent statement concerning the meaning of §1983, twelve years of statutory AFDC litigation in this Court and a line of cases applying §1983 to statutory causes of action stretching back 33 years to *Bomar v. Keyes, supra*, would be a significant departure from the holding of this Court in *United States v. Price*, 383 U.S. 787,

[35]This statute is the subject of Part II of this Brief.

[36]Two Senate sponsors, Kennedy and Abourezk, also explicitly referred to this type of case, one involving a statutory claim, as one covered by the Fees Act. 122 Cong. Rec. 33314 and 33315 (1976).

797 (1966) that the use of the word "laws" in the various civil rights statutes means *all* the laws.

C. A Ruling Favorable to Respondents Will Preserve Federalism Within the Judicial System of the United States.

If this Court affirms the judgment below, it will give impetus to the salutary trend of treating state courts equally with the federal courts in the protection of important federal rights.[37] That trend has been encouraged by recent judicial writing. Address by Warren E. Burger, Proceedings of the Second National Conference on the Judiciary (March 19, 1978) *reprinted in* National Center for State Courts, *State Courts: A Blueprint for the Future* 284 (1978); H. Friendly, *Federal Jurisdiction: A General View* 90 (1973); *see also Hagans v. Lavine,* 415 U.S. 528, 559 (1974) (Rehnquist, J., dissenting).

Individuals similar to the respondents will certainly be encouraged to take cases such as this to state court if this Court affirms. Filing a similar action in federal court will require that a constitutional claim substantial enough to meet the *Hagans* test be asserted and will require the investment of considerable judicial time to evaluate the substantiality of that claim. *See, e.g., Randall v. Goldmark,* 495 F.2d 356 (1st Cir. 1974). Since there is no jurisdictional bar to asserting a statutorily based §1983 claim in state court (absent the limitations discussed below) most people will be turning to the state court for relief. A decision reversing the judgment below will leave litigants with a

[37]To the extent that the State argues that an action brought pursuant to 42 U.S.C. §1983 is not cognizable in state court, it is in error. *Martinez v. California,* U.S. , 100 S.Ct. 553, 558 n. 7 (1980).

choice between the two different court systems with no encouragement to seek relief in state court.

If this Court reverses the judgment below, in at least some states individuals such as the respondents either will be without any remedy for a state violation of their rights under the Social Security Act or will find their ability to implement those federal rights severely restricted. In some states there is a flat prohibition against judicial review of administrative hearings involving questions of entitlement to AFDC benefits.[38] In those states, individuals with valid statutory claims will go without relief.

In other states there are procedural restrictions on the type of relief available which on their face do not appear to severely restrict relief, but which respondents believe will have just that effect. For instance, in New York individuals seeking to challenge state regulations which allegedly violate their rights under the Social Security Act may not pursue their claims as class plaintiffs. *Jones v. Berman,* 37 N.Y.2d 42, 58, 371 N.Y.S.2d 422, 432 (1975). The New York Court of Appeals has reasoned that the doctrine of *stare decisis* will be sufficient to protect other persons similarly situated. Inherent in this assumption is the belief that the state agency charged with administering the AFDC program will promptly change the offending regulation following a decision favorable to one recipient of AFDC; thus there will be no need for other persons who have been or will be damaged by the offending regulation to seek judicial relief.

Turning to the State of Maine with which respondents are

[38]Alabama, Arkansas, Mississippi, North Dakota, Ohio and South Carolina appear to prohibit such review. Ala. Code §38-4-5 (1975); Ark. Stat. Ann. §83-135 (1976); Miss. Code Ann. §43-17-17 (1972); N.D. Cent. Code § §28-32-15 and 50-09-14 (1974); *Bolin v. White,* 51 Ohio App. 2d 92, 367 N.E.2d 63 (1976); and S.C. Code §43-5-150 (Supp. 1979).

most familiar, for an example, it is apparent that the type of relief that is available in New York, which is also available in Maine, is not always sufficient to protect persons other than the litigating recipient. In *Brooks v. Smith*, 356 A.2d 723 (Me. 1976), an individual plaintiff had pursued denial of Medicaid benefits by bringing a single plaintiff action. The Maine Supreme Judicial Court held that the State regulation under which the requested benefits were denied was in conflict with the Social Security Act and was invalid. Applying the rationale of the New York Courts of Appeals, one would assume that the defendant in *Brooks*, the Commissioner of Human Services, would have promptly changed the offending regulation and begun providing benefits to all persons. Such was not the case. It was well over two years later, and only after an action similar to the action presently before the court (a statutory §1983 class action seeking injunctive relief against the Commissioner) had been filed, that the Commissioner agreed to change the regulation to conform to what had been mandated by the *Brooks* decisioin. *Corliss v. Smith*, Order Approving Consent Decree, Civil Docket No. Cv 77-686 (Cumberland County Superior Court, Feb. 8, 1979).

The State argues that a ruling that §1983 means what it says will cause a flood of statutory §1983 litigation.[39] The available evidence leads to a contrary conclusion.

The *1979 Annual Report of the Director* (Administrative Office of the United States Courts) indicates that there has been no substantial increase in §1983 litigation since the decision in *Blue v. Craig*, 505 F.2d 830 (4th Cir. 1974); [40] there has been no substantial increase in §1983 litigation

[39]Brief of State 18.

[40]*1979 Annual Report of the Director, supra* at 60, Table 20.

since the passage of the Fees Act;[41] and §1983 welfare cases are less than 0.2% of the total civil caseload in the federal courts.[42]

In summation, respondents urge this Court to affirm the holding of the Maine Supreme Judicial Court that respondents stated a cause of action pursuant to §1983. The plain meaning of §1983 and a review of its history dictate the finding that it was intended by Congress to encompass deprivations under color of state law, of all federal statutory rights.

II.

THIS IS A PROPER CASE FOR AN AWARD OF ATTORNEY'S FEES.

In *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975), this Court held that an award of attorney's fees to prevailing plaintiffs could not be made under the private attorney general exception to the American rule generally barring an award of fees. Because that theory had been relied on by civil rights plaintiffs to recover their attorney's fees piror to 1975, Congress followed the obvious suggestion of this Court and exercised its broad discretion in the area of attorney's fees[43] by enacting the Civil Rights Attorney's Fees Awards Act, 42 U.S.C. §1988. It recognized the necessity of private enforcement of the civil rights acts. The statute is broad in its scope and clear

[41]*Id.*

[42]Section 1983 welfare cases total, for 1978 and 1979, respectively, 214 and 195, out of 138,770 and 154,666 total civil rulings. Annual Report, A-14, Table C 2.

[43]*Alyeska* at 262.

in its meaning. In pertinent part, it reads:

> In any action or proceeding to enforce a provision of section [1983] the court, in its discretion may allow the prevailing party... a reasonable attorney's fee as part of the costs.

The Fees Act supports respondents' contenstions, which were accepted by the Supreme Judical Court of Maine, that it allows an award of fees where the plaintiff seeks to enforce statutory rights in a §1983 proceeding and that such an award can be made by state courts. The Fees Act speaks of "any action"; it does not limit its coverage to actions in federal court. The Fees Act speak of "§1983"; it does not speak of § 1983 constitutional claims.[44]

The amici, relying on *National League of Cities v. Usery*, 426 U.S. 833 (1976), suggested that the Tenth Amendment bars an award of fees in this case. Brief of Amici, 14 n. 15. That case holds only that Congress has no power to invade the core functions of a state when acting pursuant to the Commerce Clause.[45] An award of fees is ancillary. *Hutto v. Finnery*, 437 U.S. 678, 695-697 (1978). It is not an invasion of as state's core function. The Tenth Amendment does not bar an award of fees.[46]

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[44]The first sentence of §1988, which has been inforce since 1866, appears to refer only to actions in federal courts but has been held to control the remedies available in state court proceedings to enforce the civil right laws. *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 240 (1969). In any event the second sentence does not even appear to be so limited.

[45]Neither the Social Security Act nor the Fees Act was enacted pursuant to the Commerce Clause; thus *National League of Cities* is not applicable. *Dupler v. City of Portland*, 421 F. Supp. 1314, 1320 (D. Me. 1976).

[46]Note 15 of the Brief of Amici appears to imply that a state's immunity bars an award of fees. Sovereign immunity is not an available

(continued)

The amici have also suggested that Congress did not intend for the Fees Act to apply in state court. Brief of Amici, 14. In support of this contention they cite a line of cases from this Court saying that state courts are free to apply their own rules of procedure in actions in which the plaintiff seeks to enforce Federal rights. Those cases are not persuasive because the Fees Act deals not with procedure but with remedies. *Sullivan v. Little Hunting Parking, Inc.*, 396 U.S. 229, 240 (1969) treated §1988 as a remedial provision. The Court indicated its desire to insure that state law not be applied to defeat the underlying purpose of the federal cause of action. This Court also noted in *Alyeska* that in a diversity action the federal district court would be required to apply a state law on attorney's fees because such a state law was one dealing with substance not procedure. 421 U.S. at 259 n. 31. There is no basis for arguing that the Fees Act is procedural; it applies in state courts.

The purpose of the Fees Act is to provide for private enforcement of federal rights. S. Rep. 94-1011, 94th Cong., 2d Sess. 2; 1976 U. S. Code, Cong. & Ad. News 5908, 5909-5910. That report recognized that prevailing parties may recover attorney's fees for their statutorily based §1983 claims. *Id.* at 4.

During the debates, Representative Drinan, the House sponsor of the Fees Act[47] said:

(footnote continued from preceding page)

defense to a federal cause of action. *Ferri v. Ackerman*, U.S. , 100 S.Ct. 402, 406 (1979). The Eleventh Amendment does not bar such an award, *Hutto, supra* at 693-694, because the Fees Act was enacted pursuant to §5 of the Fourteenth Amendment as to which Congress' power is extremely broad. *Katzenbach v. Morgan*, 384 U.S. 641 (1966); *see*, L. Tribe, *American Constitutional Law*, §5-14 (1978).

[47]The remarks of the sponsor of legislation are entitled to great weight. *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976).

> The purpose of [this bill] is to authorize the award of a reasonable attorney's fee in actions brought in State or Federal courts, under certain civil rights statutes . . . .
>
> The attorney fee provision of this bill would apply to actions instituted under sections [1983] These sections generally prohibit the denial of civil and constitutional rights in a variety of areas . . . including federally assisted programs and activities.
>
> Under applicable judicial decisions, Section 1983 authorizes suits against State and local officials based upon Federal statutory as well as constitutional rights. 122 Cong. Rec. 35122 (1976).

These views, that an action to enforce statutory rights brought prusuant to §1983, when brought in state court, is a proper case for an award of fees under the Fees Act, were not challenged or questioned during the debates and give additional support to the view which respondents assert concerning the Fees Act.

In fact, in cases in federal court where a pendant state law claim is joined with a civil rights claim and the plaintiff prevails on the former, fees are awarded under the Fees Act. H.R. Rep. 94-1558, 94th Cong., 2nd Sess. 4 n. 7 (1976). *Seals v. Quarterly County Court*, 562 F.2d 390, 393-394 (6th Cir. 1977), awarded fees under the Fees Act in a case where the plaintiffs prevailed on a pendant state claim.

Congress enunciated with clarity its desire that fees be paid in all types of cases brought pursuant to §1983. The statute itself admits of no exception and should be applied according to its terms.

As the Supreme Judicial Court of Maine so aptly stated:

> The argument in favor of construing the Civil Rights Attorney's Fees Awards Act to apply to the state courts [and to statutory §1983 actions] is derived from the main purpose of the Act: namely, to encourage private

> citizens to take action, which they might not otherwise take, as 'private attorney's general' to enforce civil rights laws. That purpose ought to be carried out uniformly . . . in state courts as well as federal.
>
> . . . .
>
> The desirability of uniform remedies throughout the nation in civil rights actions and the unanimity of such authority on the point as so far exists persuade us that the Civil Rights Attorney's Fees Awards Act of 1976 should be applied [to this type of action]. (A. 63, Opinion).

This Court should adopt that reasoning.

Conclusion

For the reasons set out above, respondents request this Court to affirm the judgement of the Maine Supreme Judicial Court and remand this matter to that Court with instructions that this case be remanded to the Maine Superior Court for a a determination of respondents' attorney's fees in accord with the provisions of the Civil Rights Attorney's Fees Awards Act.

Respectfully submitted,

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